



12-CR-00098-DSGNTN

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MAY 25 2012

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DJUAN O. GARDNER,

Defendant.

NO. CR12-098RSM

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Nicholas W. Brown, Assistant United States Attorney for said District, and Defendant, DJUAN GARDNER, and Defendant's attorney, Robert Leen, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B):

1. The Charge. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enter pleas of guilty to the following charge contained in the Indictment: Felon in Possession of a Firearm, as charged in Count 1, in violation of Title 18, United States Code, Section 922(g)(1).

By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering Defendant's pleas of guilty, Defendant will be placed under oath. Any statement given by Defendant

1 under oath may be used by the United States in a prosecution for perjury or false
2 statement.

3 2. Elements of the Offenses. The elements of the offense of Felon in
4 Possession of a Firearm, as charged in Count 1 of the Indictment, are as follows:

5 First, the Defendant knowingly possessed a firearm;

6 Second, firearm had been shipped or transported in interstate or foreign
7 commerce; and

8 Third, at the time the Defendant possessed the firearm, the Defendant had
9 been convicted of a crime punishable by imprisonment for a term exceeding one year.

10 3. The Penalties. Defendant understands that the statutory penalties for the
11 offense of Felon in Possession of a firearm, as charged in Count 1, are as follows:
12 imprisonment for up to ten (10) years, a fine of up to two hundred and fifty thousand
13 dollars (\$250,000.00), a period of supervision following release from prison of up to three
14 (3) years, and a one hundred dollar (\$100.00) special assessment.

15 Defendant agrees that the special assessments for each count shall be paid at or
16 before the time of sentencing.

17 Defendant understands that supervised release is a period of time following
18 imprisonment during which he will be subject to certain restrictions and requirements.
19 Defendant further understands that if supervised release is imposed and he violates one or
20 more of its conditions, he could be returned to prison for all or part of the term of
21 supervised release that was originally imposed. This could result in Defendant serving a
22 total term of imprisonment greater than the statutory maximum stated above.

23 Defendant understands that in addition to any term of imprisonment and/or fine that
24 is imposed, the Court may order Defendant to pay restitution to any victim of the offenses,
25 as required by law.

26 Defendant agrees that any monetary penalty the Court imposes, including the
27 special assessment, fine, costs or restitution, is due and payable immediately, and further
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1 agrees to submit a completed Financial Statement of Debtor form as requested by the
2 United States Attorney's Office.

3 4. Rights Waived by Pleading Guilty. Defendant understands that by pleading
4 guilty, Defendant knowingly and voluntarily waives the following rights:

5 a. The right to plead not guilty and to persist in a plea of not guilty;

6 b. The right to a speedy and public trial before a jury of Defendant's
7 peers;

8 c. The right to the effective assistance of counsel at trial, including, if
9 Defendant could not afford an attorney, the right to have the Court appoint one for
10 Defendant;

11 d. The right to be presumed innocent until guilt has been established
12 beyond a reasonable doubt at trial;

13 e. The right to confront and cross-examine witnesses against Defendant
14 at trial;

15 f. The right to compel or subpoena witnesses to appear on Defendant's
16 behalf at trial;

17 g. The right to testify or to remain silent at trial, at which trial such
18 silence could not be used against Defendant; and

19 h. The right to appeal a finding of guilt or any pretrial rulings.

20 5. United States Sentencing Guidelines. Defendant understands and
21 acknowledges that, at sentencing, the Court must consider the sentencing range calculated
22 under the United States Sentencing Guidelines, together with the other factors set forth in
23 Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances
24 of the offenses; (2) the history and characteristics of the Defendant; (3) the need for the
25 sentence to reflect the seriousness of the offense, to promote respect for the law, and to
26 provide just punishment for the offense; (4) the need for the sentence to afford adequate
27 deterrence to criminal conduct; (5) the need for the sentence to protect the public from
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1 further crimes of the Defendant; (6) the need to provide the Defendant with educational
2 and vocational training, medical care, or other correctional treatment in the most effective
3 manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims;
4 and (9) the need to avoid unwarranted sentence disparity among Defendants involved in
5 similar conduct who have similar records. Accordingly, Defendant understands and
6 acknowledges that:

7 a. The Court will determine Defendant's applicable Sentencing
8 Guidelines range at the time of sentencing;

9 b. After consideration of the Sentencing Guidelines and the factors in
10 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
11 maximum term authorized by law;

12 c. The Court is not bound by any recommendation regarding the
13 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
14 range offered by the parties or the United States Probation Department, or by any
15 stipulations or agreements between the parties in this Plea Agreement; and

16 d. Defendant may not withdraw a guilty plea solely because of the
17 sentence imposed by the Court.

18 6. Ultimate Sentence. Defendant acknowledges that no one has promised or
19 guaranteed what sentence the Court will impose.

20 7. Statement of Facts. The parties agree on the following facts in support of
21 Defendant's pleas of guilty and sentencing. Defendant admits he is guilty of the charged
22 offense.

23 a. In January 2012, officers began utilizing a Confidential Informant
24 (CI) who managed a car dealership in Renton, Washington. Prior to working with law
25 enforcement, the CI developed a relationship with multiple individuals with prior
26 convictions, selling them cars and holding himself out as someone connected to large scale
27 drug importers associated with Mexican drug cartels.
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1 b. In January 2012, the Defendant, Djuan O. GARDNER, approached
2 the CI and told him that he had heard that the CI was interested in purchasing firearms.
3 The CI explained that he was interested in buying firearms on behalf on an associate with
4 ties to a drug cartel and that would be transported to Mexico. While no firearms
5 transactions look place at that time, the two remained in contact and on March 24, 2012,
6 GARDNER told the CI that he wanted to sell him a couple of weapons. GARDNER also
7 sent the CI a picture via text message of the two weapons that he wanted sell him.

8 c. Law enforcement officers then set up a controlled transaction, during
9 which GARDNER sold the CI two firearms: a Norinco, Model SKS, 7.62 x .39mm caliber
10 rifle, serial number 1708982; and a High-Point, Model JHP, .45 caliber semi-automatic
11 pistol, serial number X4164535. The CI paid GARDNER a total of \$1,700 for the
12 firearms, both of which were loaded when delivered. The parties agree that this offense
13 involved the possession of two firearms.

14 d. The Defendant acknowledges that both the Norinco rifle and High-
15 Point pistol were in his possession on or about the dates alleged in the Indictment. He
16 further acknowledges that both were not manufactured in the State of Washington and
17 therefore traveled in interstate or foreign commerce.

18 e. The Defendant has multiple prior felony convictions, including the
19 six convictions listed in the Indictment and an Attempt to Elude conviction, and was
20 therefore prohibited from possessing firearms.

21 8. Sentencing Factors. The parties agree and stipulate that the following
22 Sentencing Guidelines provisions apply to this case:

23 a. A base offense level of 20, pursuant to USSG § 2K2.1(a)(4), as the
24 Defendant committed the offense subsequent to sustaining a felony convictions for a crime
25 of violence; and

26 b. A four-level enhancement, pursuant to USSG § 2K2.1(b)(6),
27 transferring a firearm with reason to believe that it would be transported out of the United
28 States.

1 The parties further agree that no other provisions of the United States Sentencing
2 Guidelines apply to this case. Defendant understands, however, that at the time of
3 sentencing, the Court is free to reject these stipulated adjustments, and is further free to
4 apply additional downward or upward adjustments in determining Defendant's Sentencing
5 Guidelines range.

6 9. Acceptance of Responsibility. The United States acknowledges that if
7 Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG
8 § 3E1.1(a), and if the offense level is sixteen (16) or greater, Defendant's total offense
9 level should be decreased by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b),
10 because Defendant has assisted the United States by timely notifying the authorities of
11 Defendant's intention to plead guilty, thereby permitting the United States to avoid
12 preparing for trial and permitting the Court to allocate its resources efficiently.

13 10. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
14 the United States Attorney's Office for the Western District of Washington agrees not to
15 prosecute Defendant for any additional offenses known to it as of the time of this
16 Agreement that are based upon evidence in its possession at this time, or that arise out of
17 the conduct giving rise to this investigation. In this regard, Defendant recognizes the
18 United States has agreed not to prosecute all of the criminal charges the evidence
19 establishes were committed by Defendant solely because of the promises made by
20 Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
21 the Presentence Report, the United States Attorney's Office will provide the United States
22 Probation Office with evidence of all conduct committed by Defendant.

23 Defendant agrees that any charges to be dismissed before or at the time of
24 sentencing were substantially justified in light of the evidence available to the United
25 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
26 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
27 (1997).
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1 11. Breach, Waiver, and Post-Plea Conduct. Defendant agrees that if Defendant
2 breaches this Plea Agreement, the United States may withdraw from this Plea Agreement
3 and Defendant may be prosecuted for all offenses for which the United States has
4 evidence. Defendant agrees not to oppose any steps taken by the United States to nullify
5 this Plea Agreement, including the filing of a motion to withdraw from the Plea
6 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
7 Defendant has waived any objection to the reinstitution of any charges in the Indictment
8 that were previously dismissed or any additional charges that had not been prosecuted.

9 Defendant further understands that if, after the date of this Agreement, Defendant
10 should engage in illegal conduct, or conduct that is in violation of Defendant's conditions
11 of release or confinement (examples of which include, but are not limited to: obstruction
12 of justice, failure to appear for a court proceeding, criminal conduct while pending
13 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
14 Probation Officer or Court), the United States is free under this Agreement to file
15 additional charges against Defendant or to seek a sentence that takes such conduct into
16 consideration. Such a sentence could include a sentencing enhancement under the United
17 States Sentencing Guidelines or an upward departure from the applicable sentencing
18 guidelines range.

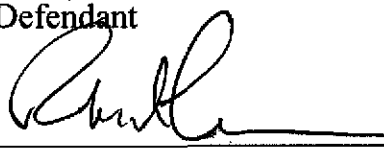
19 12. Voluntariness of Plea. Defendant agrees that Defendant has entered into this
20 Plea Agreement freely and voluntarily, and that no threats or promises, other than the
21 promises contained in this Plea Agreement, were made to induce Defendant to enter these
22 pleas of guilty.


23 13. Statute of Limitations. In the event this Agreement is not accepted by the
24 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,
25 the statute of limitations shall be deemed to have been tolled from the date of the Plea
26 Agreement to: (1) 30 days following the date of non-acceptance of the Plea Agreement by
27 the Court; or (2) 30 days following the date on which a breach of the Plea Agreement by
28 Defendant is discovered by the United States Attorney's Office.


1 14. Completeness of Agreement. The United States and Defendant
2 acknowledge that these terms constitute the entire Plea Agreement between the parties.
3 This Agreement binds only the United States Attorney's Office for the Western District of
4 Washington. It does not bind any other United States Attorney's Office or any other office
5 or agency of the United States, or any state or local prosecutor.

6 Dated this 25th day of May, 2012.

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8 
9 DJUAN GARDNER
Defendant

10 
11 ROBERT LEEN
12 Attorney for Defendant

13 
14 TODD GREENBERG
15 Assistant United States Attorney

16 
17 NICHOLAS W. BROWN
18 Assistant United States Attorney